

THE LAW OFFICE OF FREDERICK M. OBERLANDER, P.C.

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May 22, 2014

Hon. Lorna G. Schofield, U.S.
Southern District of New York

Dear Judge Schofield:

This is a courtesy copy of a letter filed as a motion by ECF. The combination of the court's prior order requiring every letter to be filed by ECF or it would be unread eliminated the possibility of simply faxing or emailing this in. But, ECF will not accept a letter as a LETTER event if the letter asks for any Article III action, therefore we were constrained to filing this simple request for temporary seal by formal ECF motion practice which is far more than necessary and liable to delays if the court waits for opposition papers and then reply etc which seems pointedly silly in this case. Moreover no one has even appeared yet (a removal is not a general appearance) so there's no one to oppose.

Pursuant to your order, and by Local Rule and direction of the court clerk, plaintiffs in the above captioned case filed a substitute complaint on May 21, 2014, using the SDNY dropbox method for the submission of documents under seal prior to an order allowing same.

We did so because the complaint, quite large with exhibits, replicates extensive portions, several hundred paragraphs, of the First Amended Complaint in 10-CV-3959, which your honor ordered filed under seal a year ago, so we presumed your honor would want the substitute complaint also filed under temporary seal as to those portions, and only a redacted version filed publicly for now¹.

To file this substitute complaint under seal in "Sealed Records" requires a signed, docketed order and subsequent manual delivery along with a CD and other formalities.

There is a First Amendment right of access to civil complaints in this circuit, so there cannot be extended sealing without public notice and an opportunity to be heard, findings, and so on, nevertheless there is sufficient basis for the Court to order a temporary seal pending further consideration at the scheduled June 10, 2014 status conference, which of course will be public.

Accordingly we request your honor issue the attached proposed order so we may deposit the substitute complaint and CD with Sealed Records and complete the filing.

/s/ Frederick M. Oberlander
/s/ Richard E. Lerner

¹ The substitute complaint does not attribute these paragraphs to the FAC in 3959, or source them to it, so a public filing would not violate the order sealing the FAC. However, while that is absolutely the law, as a matter of respect for the Court we chose not to publicly expose it on our own initiative on this related docket.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KRISS et al.

13-CV-3905

v.

BAYROCK GROUP LLC et al.

ORDER *PRO TEMPORE* TO
FILE UNDER SEAL

WHEREAS, the court previously directed plaintiffs to file a substitute complaint in this matter; and

WHEREAS, plaintiffs have advised the court that the substitute complaint contains extensive material excerpted largely verbatim from the FAC in related case 10-CV-3959 which is currently filed under seal by order of this court and requested leave to file this substitute complaint under temporary seal;

IT IS ORDERED, that pending further order of this court plaintiffs shall follow the appropriate procedures to complete the filing of this substitute complaint under seal; and

IT IS FURTHER ORDERED, that plaintiffs shall thereafter cause the upload to ECF of a version with those excerpts redacted; and

IT IS FURTHER ORDERED, that plaintiffs shall bring this matter to the court's attention at the forthcoming status conference.

Lorna G. Schofield, USDJ (date)